



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4718-00
13 December 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 18 September 1979 for four years at age 17. The record reflects that you were advanced to SN (E-3) and served for more than two years without incident. However, during the 10-month period from October 1981 to August 1982 you received three nonjudicial punishments (NJP). Your offenses consisted of unauthorized absences (UA) of five hours and 15 days, missing movement, breaking restriction, possession of drug paraphernalia, absence from your appointed place of duty, and disobedience of an officer and a petty officer.

On 20 August 1982 you were notified that you were being considered for discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and that if discharge was approved, it could be under other than honorable conditions. You declined to consult with legal counsel and waived your right to present your case to an administrative discharge board (ADB).

Thereafter the commanding officer recommended discharge by reason of misconduct. On 6 September 1982 the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct. However, the DD Form 214 you were issued on 10 September 1982 shows you were separated with a general discharge under honorable conditions. This appears to be erroneous since there is no evidence that the Chief of Naval Personnel rescinded the action directing discharge under other than honorable conditions.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 18 years since you were discharged. The Board noted your contention that you were told that your discharge would be upgraded to honorable if you stayed out of trouble. Your contention is neither supported by the evidence of record nor by any evidence submitted in support of your application. Further, there are no provisions for automatic upgrading of a discharge. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of three NJPs within the last 12 months of service. Although it appears you were erroneously separated with a general discharge, nothing will be done to correct this error since the Board will not take any action that would make an individual worse off. An honorable discharge is not authorized for a misconduct discharge unless the individual's record is otherwise so meritorious that any other characterization would be clearly inappropriate, and the separation is approved by the Chief of Naval Personnel or higher authority. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director